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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 SEAVON PIERCE,) No. EDCV 11-1485-VAP (CW)
13)
14 Petitioner,) ORDER OF DISMISSAL
15)
16 v.)
17 HEDGPETH (WARDEN),)
18)
19 Respondent.)
20)
21)
22)
23)
24)

25 The pro se petitioner is a prisoner in state custody pursuant to
26 a 2006 conviction in California Superior Court, Riverside County, Case
27 No. SWF 002212. The validity of this conviction (and sentence) is the
28 subject of a habeas petition filed by Petitioner under 28 U.S.C.
§ 2254 which is still pending in this court as Pierce v. Sullivan, No.
EDCV 09-310-VAP (CW).¹ The present petition, ordered filed on

25 ¹ By way of historical background, the court appointed counsel
26 to represent Petitioner in Case No. EDCV 09-310. [See Minute Orders
27 dated September 3 and September 22, 2010 (docket numbers 50 and 51,
28 respectively).] On February 28, 2011, Petitioner filed a request for
the "immediate removal" of appointed counsel; on the same day,
appointed counsel filed an ex parte application to be relieved as
(continued...)

1 September 15, 2011, is the fourth filed by Petitioner in this court
2 which challenges the same conviction and sentence.²

3 DISCUSSION

4 A federal district court may entertain a habeas petition on
5 behalf of a person who is in custody under a state court judgment and
6 in violation of the Constitution, laws, or treaties of the United
7 States. 28 U.S.C. 2254(a). The court need neither grant the writ nor
8 order a return if it appears from the petition that the petitioner is
9 not entitled to relief. 28 U.S.C. § 2243; Rule 4, Rules Governing
10 Section 2254 Cases, 28 foll. § 2254. A federal habeas petitioner is
11 required to "specify all the grounds for relief which are available to
12 the petitioner" and should address the judgment or judgments of a
13 single state court. Rule 2(c)-(d), 28 foll. § 2254. If a petition
14 does not substantially comply with Rule 2 it may be rejected with a
15 statement of the reason for its rejection. Rule 2(e), 28 foll.

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18 ¹ (...continued)
19 counsel. [See docket numbers 65 and 66.] In a minute order dated
20 March 23, 2011, the court granted counsel's application and recognized
21 Petitioner's election to proceed and remain pro se. [See docket number
22 68.] Not long after, Petitioner filed a motion for discovery, during
the pendency of which Petitioner lodged the instant pro se petition
on May 13, 2011. On September 8, 2011, the court denied Petitioner's
motion for discovery in Case No. EDCV 09-310, and took that case under
submission on the existing record.

23 ² On September 13, 2011, judgment was entered on the third
24 petition filed by Petitioner challenging this conviction, Pierce v.
25 Hedgpeth, EDCV 10-820-VAP (CW), dismissing the petition as
26 duplicative, without prejudice to Petitioner filing a motion for leave
27 to amend in Case No. EDCV 09-310. Previously, judgment was entered on
28 April 29, 2010, similarly dismissing the second petition, Pierce v.
Hedgpeth (Warden), EDCV 10-474-VAP (CW); a certificate of
appealability was denied by the Ninth Circuit in that matter on June
15, 2011. To date, Petitioner has not filed a motion for leave to
amend (or supplement) his Petition in Case No. EDCV 09-310.

1 § 2254. A petition may be amended or supplemented as provided by
2 rule. 28 U.S.C. 2242; Rule 11, 28 foll. § 2254; Rule 15, Federal
3 Rules of Civil Procedure.

4 Under the applicable rules and statutes, Petitioner should have
5 included all of his claims for federal habeas relief from the same
6 state conviction in his prior and pending petition. There is no
7 indication that Petitioner has any claims, cognizable on federal
8 habeas review, that could be raised in the present action but not in
9 No. EDCV 09-310. Rather than filing the present new petition,
10 Petitioner should have filed a motion for leave to amend in No. EDCV
11 09-310. There is no evident reason why he cannot now move to amend
12 the prior petition in order to include the new claims, provided that
13 he has met the other requirements for presenting habeas claims in
14 federal court, such as the requirement of first exhausting state court
15 remedies, see 28 U.S.C. § 2254(b)-(c), and the statute of limitations
16 at 28 U.S.C. § 2244(d). If Petitioner is able to amend the pending
17 petition in Case No. EDCV 09-310 to include any new claims from the
18 present petition, the new claims would receive the same consideration
19 that they would if presented in a separate action.

20 The court has discretion to dismiss a pleading "that merely
21 repeats pending or previously litigated claims." Cato v. United
22 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The present petition
23 can, at most, only repeat claims that have been or should have been
24 raised in Petitioner's pending, previously filed action. Therefore,
25 the present petition should be summarily dismissed.

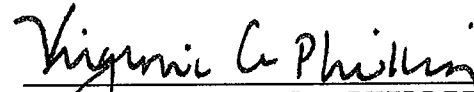
26 If Petitioner wants to litigate his new claims, he should file,
27 in Case NO. EDCV 09-310, a motion for leave to amend in which he
28 clearly identifies the new claims he seeks to add, and shows that they

are exhausted and timely.

ORDERS:

It is therefore **ORDERED** that judgment be entered dismissing this action as duplicating Case No. EDCV 09-310. Dismissal is without prejudice to filing a motion for leave to amend in No. EDCV 09-310.

DATED: Sept 22 2011



VIRGINIA A. PHILLIPS
United States District Judge

Presented by:
Dated: September 21, 2011



CARLA M. WOHRLE
United States Magistrate Judge